

21 C.J.S. Courts § 218

Corpus Juris Secundum | May 2023 Update

Courts

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VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

3. Extent of Precedential Effect of Decision

§ 218. Implication from earlier decision

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Stare decisis does not extend to cover implications in opinions, such as issues that might have been decided sub silentio.

The rule of stare decisis may not be extended to cover implications from what was decided in a former case,¹ and thus, a case is not binding precedent if its holding is only implicit or assumed,² or the issue was decided sub silentio.³ Constitutional rights are not defined by inferences from opinions that did not address the question at issue,⁴ and a court does not normally overturn or dramatically limit its earlier authority sub silentio.⁵ Similarly, the fact that an appellate court may have decided an appeal of a particular type of order on the merits is not dispositive of whether the order is appealable if the issue of appealability was not raised.⁶

Jurisdictional issues.

When questions of jurisdiction have been passed on in prior decisions sub silentio, the court is not bound when a later case finally brings the jurisdictional issue before it.⁷ Thus, when a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed.⁸

CUMULATIVE SUPPLEMENT

Cases:

The Florida Supreme Court does not intentionally overrule itself sub silentio: where a court encounters an express holding from the Florida Supreme Court on a specific issue, the court is to apply the express holding in the former decision until such time as the Supreme Court recedes from the express holding. [Global Quest, LLC v. Horizon Yachts, Inc.](#), 849 F.3d 1022 (11th Cir. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ariz.—[City of Bisbee v. Cochise County](#), 52 Ariz. 1, 78 P.2d 982 (1938).

 Ky.—[Rex Coal Co. v. Campbell](#), 213 Ky. 636, 281 S.W. 1039 (1926).

 Mo.—[Broadwater v. Wabash R. Co.](#), 212 Mo. 437, 110 S.W. 1084 (1908).
- 2 Alaska—[Joseph v. State](#), 26 P.3d 459 (Alaska 2001).
- 3 Ohio—[State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bur. of Workers' Comp.](#), 108 Ohio St. 3d 432, 2006-Ohio-1327, 844 N.E.2d 335 (2006).

 Unreliability of sub silentio rulings
 Arguments based on what courts do not say are generally unreliable and should not be favored, especially when the court is faced with a contrary constitutional provision.

 Ala.—[Ex parte James](#), 836 So. 2d 813, 174 Ed. Law Rep. 487 (Ala. 2002).
- 4 U.S.—[Texas v. Cobb](#), 532 U.S. 162, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001).
- 5 U.S.—[Shalala v. Illinois Council on Long Term Care, Inc.](#), 529 U.S. 1, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2000).
- 6 S.C.—[Breland v. Love Chevrolet Olds, Inc.](#), 339 S.C. 89, 529 S.E.2d 11 (2000).
- 7 U.S.—[U.S. v. Bowers](#), 615 F.3d 715 (6th Cir. 2010); [Minority Television Project, Inc. v. F.C.C.](#), 736 F.3d 1192 (9th Cir. 2013), cert. denied, 134 S. Ct. 2874, 189 L. Ed. 2d 834 (2014).
- 8 U.S.—[Arizona Christian School Tuition Organization v. Winn](#), 563 U.S. 125, 131 S. Ct. 1436, 179 L. Ed. 2d 523, 265 Ed. Law Rep. 855 (2011).

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